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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA,
18 SAN FRANCISCO DIVISION

19
20 SONOS, INC.,
21 Plaintiff and Counter-Defendant,
22 v.
23 GOOGLE LLC,
24 Defendant and Counter-Claimant.

Case No. 3:20-cv-06754-WHA
Consolidated with
Case No. 3:21-cv-07559-WHA

**SONOS, INC.'S RESPONSE TO
REQUEST FOR INFORMATION**

Judge: Hon. William Alsup
Pretrial Conf.: May 3, 2023
Time: 12:00 p.m.
Courtroom: 12, 19th Floor
Trial Date: May 8, 2023

1 Sonos submits the following responses to the Court's request for information, Dkt. 649.

2 **1. In the real world, how much money has the IFTTT app developer received as a
3 result of sales on the Google Play store?**

4 Sonos does not have access to the amount of money the IFTTT app developer received
5 from sales on the Google Play store. Sonos reached out to IFTTT for this information after the
6 Court issued its questions but has not heard back. The Court should note that IFTTT is also
7 available on the Apple App store and that Apple has a larger market share than Google.

8 For context: Sonos's damages calculation does not depend on the *amount* of money that
9 IFTTT received for sales of its solution on the Google Play store. That is because Sonos used
10 IFTTT to establish the *price* that consumers are willing to pay for a comparable technological
11 solution, not the amount of *revenue* that solution generates when sold on its own. Why?
12 Because, of course, both Sonos and Google bundle similar solutions into their products ... so
13 consumers don't generally *need* an after-market solution. To give an analogy, the market price of
14 an after-market steering wheel can be used as a starting point for a damages calculation on a
15 steering-wheel patent even though cars already come with steering wheels and thus there is a
16 relatively small after-market. The question is whether the *price* of the comparable after-market
17 steering wheel reflects the fair market value. In this case the facts suggest it does: the makers of
18 IFTTT allowed consumers some flexibility to choose their price and Sonos used the *lowest* price
19 that consumers could choose. Having the actual data about the number of IFTTT sales and their
20 various price points might have allowed Sonos to use a *higher* price as the market price ... but the
21 approach Sonos used (taking the lowest available price as the market price) is clearly *reasonable*.

22 **2. In the real world, how many downloads have been made of the IFTTT app?**

23 As of May 3, 2022, the IFTTT app was downloaded between 5 million and 10 million
24 times from the Google Play Store. The IFTTT app is also available on the Apple App store, but
25 the Apple App store does not show the number of downloads. The Android market makes up 40-
26 45% of the US Market depending on the year, with the remainder being almost entirely Apple.
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1 **3. How many users have the Google Home app installed?**

2 Sonos accuses computing devices installed with at least the Google Home App of
 3 infringing the '966 patent. There are between [REDACTED] installations of the
 4 Google Home App from Q4 2019 through Q4 2022. *See* 12/9/22 Malackowski Suppl. Rep. at 29-
 5 30; 1/23/23 Malackowski Reply Rep. at 21. Sonos intends to use the lower number in the
 6 damages calculation it presents at trial.

7 **4. How many uses does Sonos accuse of infringing the patents?**

8 Both the '885 and '966 patents are device claims, not method claims. As such, Sonos is
 9 not relying on *use* of the accused products for purposes of establishing infringement. The '885
 10 patent claims zone players with software capable of performing certain functions. Sonos accuses
 11 Google media players of infringing the '885 patent. The players are *sold* with software capable of
 12 performing all the claimed functions. *See* Dkt. 309 at 9 (Order on Summary Judgment
 13 confirming that "the accused products only need to be reasonably capable of satisfying the
 14 limitation."); *NetFuel, Inc. v. Cisco Sys. Inc.*, 438 F. Supp. 3d 1031, 1035 (N.D. Cal. 2020)
 15 (Davila, J.) (applying the "reasonably capable" test to a claim similarly employing "when
 16 executed" language); 35 U.S.C. § 271 (Anyone who "makes, uses, offers to sell, or **sells** any
 17 patented invention, within the United States or imports into the United States any patented
 18 invention during the term of the patent therefor," infringes the patent). Google sold [REDACTED]
 19 accused media players between Q4 2020 and Q3 2022. 1/23/23 Malackowski Reply Rep. at 8.

20 Sonos accuses computing devices installed with at least the Google Home App of
 21 infringing the '966 patent. When the Google Home App is *installed on* a computing device,
 22 infringement occurs by way of "making" the claimed invention, because the Google Home App
 23 programming is capable of performing every function recited in the claims. Dkt. 309 at 9;
 24 35 U.S.C. § 271 (Anyone who "**makes**, uses, offers to sell, or sells any patented invention, within
 25 the United States or imports into the United States any patented invention during the term of the
 26 patent therefor," infringes the patent). Sonos therefore does not accuse "uses" in the sense of
 27 performing the acts of making and invoking zone scenes of infringement.

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1 Dated: May 5, 2023

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